

## **REMARKS**

As an initial matter, withdrawal of Finality of the Office Action mailed on September 2008 is noted.

Claims 216-219, 221, and 223-233 are pending in this Application. Claim 216 has been amended to correct a grammatical error. No new matter has been added.

### **Drawings**

The drawings are objected to as allegedly failing to comply with 37 CFR §1.84(p)(5) because they do not include element 48 mentioned in the description.

Specification has been amended by deleting all references to element 48, thereby rendering this objection moot.

The drawings are also objected to under 37 CFR §1.83(a). In particular, the Office Action states that:

The drawings must show every feature of the invention specified in the claims. Therefore, the upper and lower cover portion must be shown/referenced by number or the feature(s) canceled from the claim(s).

Submitted herewith are replacement drawings for Figures 14A and 14B, showing the upper cover portion **3A** and the lower cover portion **3B**. The paragraph on lines 3-10 of page 12 has been amended to include references to upper cover portion **3A** and the lower cover portion **3B** in the Figures. In addition, references to upper and lower cover portions **3A** and **3B**, respectively, have been added to the paragraph beginning on page 25, line 31, and ending on page 26, line 5. A reference to the lower portion of the conduit **14B** has also been added to Figure 14B. A marked up copy showing the changes to FIGS. 14A and 14B is included as well.

### **Double Patenting Rejections**

Claims 216-219, 221 and 223-233 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over (i) Claims 1-32 of copending Application No. 12/073,984 (ii) Claims 21-40 of copending Application No. 11/653,121 (iii) Claims 21-40 of copending Application No. 11/455,364, and (iv) Claims 1-29 of copending Application No. 12/073,985.

Since none of the claims of these copending applications have been allowed, Applicants respectfully request this issue be deferred until allowable subject matter is indicated at which time an appropriate terminal disclaimer will be filed, if necessary.

**Rejection Under 35 U.S.C. §103(a)**

Claim 216, 217, 219, 221, and 223 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over United Kingdom Patent Application Publication No. GB 2 217 165 by Maruyama et al. (the “Maruyama et al. Patent Application”) in view of U.S. Patent No. D416,102, issued to Schulman et al. (the “Schulman et al. Design Patent”) and U.S. Patent No. 5,555,676 issued to Lund (the “Lund Patent”).

Claims 224 and 233 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over the Maruyama et al. Patent Application in view of the Schulman et al. Design Patent and the Lund Patent as applied to Claim 216 and further in view of U.S. Patent Publication No. 2002/0184820 filed by Mauney (the “Mauney Patent Application”).

Claims 225-228, 230, 231, and 232 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the Maruyama et al. Patent Application in view of the Schulman et al. Design Patent, and the Lund Patent as applied to Claim 216 and further in view of U.S. Patent No. 4,584,791, issued to Wolf (the “Wolf Patent”) and U.S. Patent No. 4,403,443 issued to Valente (the “Valente Patent”).

Claims 229 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the Maruyama et al. Patent Application in view of the Schulman et al. Design Patent and the Lund Patent and further in view of the Wolf Patent and the Valente Patent as applied to Claim 216 and 225, further in view of U.S. Patent No. 4,976,064, issued to “Young et al.” [sic] (the “‘064 Patent”). It should be noted U.S. Patent No. 4,976,064 is issued to Julien and not to Young et al. as stated in the Office Action. A clarification is requested regarding this inconsistency.

It is well established law that in order to establish a prima facie case of obviousness, there must be a sufficient evidence showing that either the cited reference(s) or the knowledge generally available to one of ordinary skilled in the art provides some suggestion or motivation to modify or combine reference teachings. See MPEP §2145(X)(c). More significantly, the

combination of the cited references must lead to the claimed invention in order for the obviousness rejection to be proper.

In this case, the Office Action has clearly failed to show a sufficient evidence that would lead one skilled in the art to the devices claimed in the present Application by combining the cited references.

Without commenting on the merits of various other elements cited in the Office Action, and the Applicants reserve the rights to present such argument if and when it becomes necessary, it is submitted that the Office Action has failed to show any evidence that would lead combination of the cited references to a device that includes a cover that comprises a bifurcated conduit portion extending **between the upper cover portion and the lower cover portion** to the plant opening. Specifically, Claim 216 of the present Application states:

216. A self-contained, tabletop aeroponic or hydroponic garden, comprising:
- a base;
  - a chamber supported on the base, the chamber including an open upper portion and a sealed lower portion for storing a liquid nutrient solution;
  - a cover removably supported on the open upper portion of the chamber, the cover defining a plant opening adapted to support a plant;
  - a photoradiation hood supported above the cover by an adjustable support arm extending upward from the base, the photoradiation hood including an artificial light source;
  - a controller located on the base, the controller adapted to switch the artificial light source on and off on a timed light cycle;
  - a display panel located on the base, the display panel being in communication with the controller, wherein the display panel includes an add nutrient indicator that operates on a timed nutrient cycle;
  - a pump located in the sealed lower portion of the chamber, the pump adapted to deliver the liquid nutrient solution to the plant opening in the cover; and
  - a power cord adapted to plug into a household outlet and provide power to at least one of the photoradiation hood, the controller, and the display panel;
- wherein the cover comprises an upper cover portion and a lower cover portion**, and the plant opening extends through both the upper cover portion and the lower cover portion, **wherein the self-contained, tabletop aeroponic or hydroponic garden further comprises** a bifurcated conduit extending from the pump to the plant opening **for delivering the liquid nutrient solution to the plant opening**, the bifurcated conduit including a first bifurcated conduit portion connected to the pump, and **a second bifurcated conduit portion extending between the upper cover portion and the lower cover portion to the plant opening**.

(Emphasis added). A cover comprising an upper cover and a lower cover is disclosed throughout the Application including, but not limited to, lines 3-10 on page 12, lines 3-12 on page 21, lines 26-30 on page 43, lines 17-19 on page 45, and lines 3-4 on page 53. This is also illustrated in the replacement FIGS. 14A and 14B.

In contrast, the Office Action on page 8 alleges that the Maruyama et al. Patent Application discusses:

the cover [that] comprises an upper cover portion and a lower cover portion (Maruyama Fig. 1 #76 top surface is upper portion and #76 lower surface is bottom portion...).

Regardless of the merits of this statement, it is clear that there is no conduit between the upper cover portion and the lower cover portion of the cover disclosed in the Maruyama et al. Patent Application. The upper cover portion and the lower cover portion referred to in the Maruyama et al. Patent Application simply refers to what is generally considered the top side and the bottom side of the cover. See Figure 1. And none of the cited references make up this deficiency in the Maruyama et al. Patent Application.

The Office Action alleges that “applicant hasn't claimed a space between the upper and lower portion or any additional distinct structure of the upper and lower portion....” See page 8 of the Office Action.

Clearly this is not the case, as Claim 216 clearly claims a “bifurcated conduit portion extending between the upper cover portion and the lower cover portion to the plant opening.”

It appears that upon close reading of the Maruyama et al. Patent Application, the upper cover portion and the lower cover portion of the Maruyama et al. Patent Application referred to in the Office Action is not a cover but at best a “nutrient supply tray assembly.” See page 5, line 37, to page 6, line 5 of the Maruyama et al. Patent Application. If this is what the Examiner has intended to be the “upper and the lower cover portions”, it is submitted that the plant opening in this “cover” of the Maruyama et al. Patent application only appears on the “upper cover portion”.

In contrast, the plant opening of the present pending claims extends through both the upper cover portion and the lower cover portion. And none of the other cited references make up the deficiencies of the Maruyama et al. Patent Application.

In view of the above, it is clear that the Office Action has failed to provide any sufficient evidence that would lead one skilled in the art to the devices claimed in the present Application. Accordingly, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. §103(a).

### CONCLUSION

In view of the foregoing, Applicants submit that all claims now pending in this Application are in condition for allowance. Therefore, an early Office Action to that effect is earnestly solicited. If the Examiner believes a telephone conference would aid in the prosecution of this case in any way, please call the undersigned at (303) 955-8103.

Respectfully submitted  
HAMILTON DESANTIS & CHA  
Customer Number: **68514**

Date: August 31, 2009

By: /Don D. Cha/  
Don D. Cha  
Atty. Reg. No. 40,945  
Telephone: (303) 955-8103